IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11794 of 2002

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DR. N P DESAI

Versus

STATE OF GUJARAT & ORS.

Appearance:

1. Special Civil Application No. 11794 of 2002
MR RAMNANDAN SINGH for the Petitioner
MR DIPEN DESAI, AGP for Respondents Nos. 1-3

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date of decision: 01/07/2004

ORAL JUDGEMENT

Heard the learned advocates.

The petitioner, a retired Government servant, claims interest on the amount of retiral benefits which, according to the petitioner, were paid belatedly.

The petitioner is a qualified doctor. At the relevant time he was serving as Associate Professor, Regional Training Centre, Sachin, District Surat in Class-I service. On 1st April, 1996 he made application for voluntary retirement on expiry of three months' notice period i.e. 30th June, 1996. It is the claim of the petitioner that till 30th June, 1996 he did not receive any communication from the State Government. He, therefore, unilaterally handed over charge and relieved himself from service. The petitioner thus stood retired from service with effect from 1st July, 1996. The retiral dues, however, were not paid until 30th June, 1999. The petitioner has, therefore, presented this petition under Article 226 of the Constitution of India and has claimed that the petitioner be paid interest 18% per annum over the amount of retiral benefits received by the petitioner.

In answer to the notice issued by this Court the State Government has appeared and has contested the petition. It is denied that the petitioner was not given any communication until 30th June, 1996. It is stated that on 30th April, 1996 the petitioner was informed that his application for voluntary retirement was under consideration and that he shall not retire from service till he is permitted to retire by a specific order. On 29th June, 1996 a telegram was sent to the petitioner informing that his application for voluntary retirement was not accepted and that he should not be relieved on 30th June, 1996.

Learned AGP Mr.Desai has also produced original files to show that the petitioner's application was under active consideration and on 29th June, 1996 a specific decision was taken not to permit the petitioner to retire from service. On 13th August, 1996 the petitioner was also given a notice to explain his conduct of unilaterally handing over the charge on 30th June, 1996 in spite of specific instruction given on telephone and by telegram on 29th June, 1996. The petitioner, having reached the age of superannuation, by order dated 26th February, 1999 the petitioner was permitted to retire from service with effect from 28th February, 1999 on condition that the disciplinary action initiated against him would be continued under Rule 189-A/189-B of the Bombay Civil Service Rules. On further consideration, by

Resolution dated 17th June, 1999 the petitioner was permitted to retire from service on 30th June, 1996.

Learned advocate Mr.Singh has vehemently argued that the petitioner did not receive any of the aforesaid communications stated to be sent to the petitioner. The telegram dated 29th June, 1996 was received by the petitioner on 2nd July, 1997 i.e. after he actually retired from service. In the submission of Mr.Singh the said telegram dated 29th June, 1996 is of no relevance since it was not received by 30th June, 1996, the last date of the notice period. The petitioner having not received any communication rejecting his application for voluntary retirement till the last date of the notice period the petitioner had a right to take voluntary retirement unilaterally and to relive himself. The petitioner, therefore, was entitled to receive pension and other retiral benefits on 1st July, 1996, which he did not receive until 30th June, 1999. Hence, the petitioner is entitled to interest as claimed by him.

Rule 161 of the Bombay Civil Service Rules provides, inter alia, for compulsory retirement of a Government servant. Sub-rule (1)(aa)(ii) empowers a Government servant to retire from service by giving notice of not less than three months in writing to the Appointing Authority. The proviso thereto empowers the Appointing Authority to withhold permission to retire to a Government servant who is under suspension, or against whom Departmental proceedings are pending or contemplated and who seeks to retire under the said sub-clause. This provision was under consideration by the Hon'ble Supreme Court in the matter of B.J.Shelat v/s. State of Gujarat & Ors. [19 GLR 793]. The Hon'ble Court held that, "...But the proviso has restricted the right conferred on the Government servant. Under the proviso it is open to the apponting authority to withhold permission to retire a Government servant when (1) he is under suspension, or (2) against whom departmental proceedings are pending or contemplated." The Hon'ble Court further held that, "...For the proviso to become operative it is necessary that the Government should not only take a decision but communicate it to Government servant. It is not necessary that the communication should reach the Government servant."

On perusal of the original record I find several communications and reference to the telephonic instructions given to the petitioner. It is, therefore, not believable that the petitioner did not receive any of the said communications nor did he receive any telephonic

instruction. It is quite true that the telegram sent on 29th June, 1996 may have been received by the petitioner on 2nd July, 1997. However, once the State Government had taken decision not to permit the petitioner to take retirement before the last date of the notice period and the communication was sent to the petitioner, the petitioner could not have relieved himself unilaterally on 30th June, 1996. Ultimately, it was on 17th June, 1999 when the petitioner's application for voluntary retirement from 30th June, 1996 was accepted. The retiral dues of the petitioner were paid soon thereafter. I am, therefore, of the view that the petitioner cannot be said to have been paid the retiral dues belatedly as claimed by the petitioner. On the contrary, it appears that several preliminary inquiries were pending against the petitioner at the time he applied for voluntary retirement. He handed over the charge on 30th June, 1996 in a hurry to be relieved from Government service.

Further, Rule 193 of the Bombay Civil Service Rules enjoins upon a Government servant to submit a formal application for pension in Form 15-A twelve months in advance of the date of his actual or anticipated retirement. Thus, this rule contemplates a formal application for pension in Form 15-A. It also envisages twelve months' period to process the same. In the present petition the petitioner has not stated the date when he made application for pension in Form 15-A. Ordinarily, twelve months' period would be required to process the same. Hence, in absence of the specific date on which the petitioner made formal application for pension in Form 15-A, the petitioner's claim for interest for delay in payment of retiral dues cannot be entertained.

The petitioner had preferred Special Civil Application No.3333/2000 in the subject matter of the present petition. The same came to be disposed of on 24th April, 2000 (Coram: R.R.Tripathi, J.) as under :

"The petition is filed by the petitioner making the grievances set out in the petition. However, the grievances of the petitioner are not bonafide in as much as the petitioner has not given any explanation as to what did he do between 1996 and 1999. However, with a view to give him an opportunity, the permission is given to the learned advocate for the petitioner to withdraw the petition so as to enable him to pursue the remedy with the authorities. The permission is granted. The petition stands disposed of as

withdrawn."

It should be noted that even a petition preferred in the year 2000 was found to be grossly belated. Further though the petitioner had been permitted to withdraw the petition with a view to making representation to the concerned authority, the petitioner was not reserved liberty to file fresh petition in case the representation were rejected. The Hon'ble Supreme Court has, in the matter of Sarguja Transport Service v/s. State Transport Appellate Tribunal, Gwalior and others [AIR 1987 SC 88], held that, "the principle underlying R.1 of O.XXIII of the Code should be extended in the interests of administration of justice to cases of withdrawal of writ petition also, not on the ground of res judicata but on the ground of public policy as explained above. It would also discourage the litigant from indulging in bench-hunting tactics. In any event there is no justifiable reason in such a case to permit a petitioner to invoke the extraordinary jurisdiction of the High Court under Art.226 of the Constitution once again. While the withdrawal of a writ petition filed in High Court without permission to file a fresh writ petition may not bar other remedies like a suit or a petition under Art.32 of the Constitution since such withdrawal does not amount to res judicata, the remedy under Art.226 of the Constitution should be deemed to have been abandoned by the petitioner in respect of the cause of action relied on in the writ petition when he withdraws it without such permission." This principle has been followed by this Court in the matters of Natwar Textile Processors Pvt. Ltd. & Anr. v/s. Union of India & Ors. [31(1) GLR 338] and of Bhagwandas D.Tandel v/s. S.N.Sinha, Director General of Police & Ors. [37(1) GLR 782]. Mr.Singh, however, has submitted that the cause of action in Special Civil Application No.3333/2000 was not identical to the cause of action in the present petition. I see no substance in this submission. In both these petitions the petitioner has claimed interest over the amount of retiral benefits.

In above view of the matter the petitioner's claim for interest over the amount of retiral dues is rejected. Petition is dismissed. Notice is discharged.

(Ms. R.M.Doshit, J.)

/sakkaf